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The Market By Jennifer's LLC and Joanne Raus.
Case 28–CA–236704

May 6, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that The Market by Jennifer's LLC (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Joanne Raus (the Charging Party) on February 25, 2019, the General Counsel issued a complaint and notice of hearing on February 7, 2020, against the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On March 9, 2020, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on March 12, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by February 21, 2020, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 25, 2020, advised the Respondent that unless an answer was received by March 4, 2020, the Region may pursue a default judgment. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motions to Transfer Case to and Continue Proceedings Before the Board and for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Phoenix, Arizona (the Respondent's facility), and has been operating a public restaurant selling food and beverages. During the 12-month period ending February 25, 2019, the Respondent, in conducting its operations, purchased and received at the Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Arizona. In conducting its operations during the 12-month period ending February 25, 2019, the Respondent derived gross revenues in excess of \$500,000.

We find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Jennifer Russo Fitzgerald	–	Owner
Levi Lopez	–	Manager
Julia Terrell	–	Supervisor

On various dates between about late January 2019, a more precise date being unknown to the General Counsel, to about February 19, 2019, the Respondent's employee Raus engaged in concerted activities with other employees for the purposes of mutual aid and protection and concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, by raising concerns about sexual harassment with other employees and with the Respondent.

About February 19, 2019, the Respondent;

- (a) eased scheduling its employee Raus for work; and
- (b) discharged its employee Raus.

The Respondent engaged in the conduct described above because its employee Raus engaged in the conduct described above, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices described above affect

commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by ceasing to schedule work for employees and discharging employees because they engaged in concerted activities with other employees for the purposes of mutual aid and protection, we shall order the Respondent to offer Joanne Raus full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. Further, the Respondent shall make Joanne Raus whole for any loss of earnings and other benefits suffered as a result of the discrimination against her.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, we shall order the Respondent to compensate Raus for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 28, within 21 days of the date the amount of backpay that is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), we shall also order the Respondent to compensate the employees for their search-for-work and interim employment expenses, regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Further, the Respondent shall also be required to remove from its files any reference to the unlawful discharge of Joanne Raus and to notify her in writing that this has

been done and that the unlawful discharge will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, The Market by Jennifer's LLC, Phoenix, Arizona, its officers, agents, successors, and assigns shall:

1. Cease and desist from

(a) Ceasing to schedule employees for work because they engage in concerted activities with other employees for the purposes of mutual aid and protection and to discourage employees from engaging in protected activity.

(b) Discharging employees because they engage in concerted activities with other employees for the purposes of mutual aid and protection and to discourage employees from engaging in protected activity.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer discharged employee Joanne Raus full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Joanne Raus whole for any loss of earnings and benefits suffered as a result of the discrimination against her, and also make Raus whole for reasonable search-for-work and interim employment expenses, plus interest, in the manner set forth in the remedy section of this decision.

(c) Compensate Joanne Raus for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for Raus.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Joanne Raus, and within 3 days thereafter, notify Raus in writing that this has been done and that the unlawful action will not be used against her in any way.

(e) Post at its Phoenix, Arizona facility copies of the attached notice marked "Appendix."¹ Copies of the notice,

¹ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of the paper notices also applies

to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 19, 2019.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 6, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT stop scheduling you for work because you engage in concerted activities with other employees for the purposes of mutual aid and protection by complaining to us regarding the wages, hours, and working conditions of our employees and by raising concerns about sexual harassment with other employees and with us.

WE WILL NOT discharge you because you engage in protected concerted activities with other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of this Order, offer discharged employee Joanne Raus full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Joanne Raus whole for any loss of earnings and benefits suffered as a result of her discharge, plus interest, and WE WILL also make Raus whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Joanne Raus for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 28, and WE WILL, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for Raus.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Joanne Raus, and WE WILL, within 3 days thereafter, notify Raus in writing that this has been done and that the unlawful action will not be used against her in any way.

THE MARKET BY JENNIFER'S LLC

The Board's decision can be found at www.nlr.gov/case/28-CA-236704 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

